

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

MICKY EAST,	:	
	:	C.A. No. K10A-05-002 WLW
Claimant Below,	:	
Appellant,	:	
	:	
v.	:	
	:	
INTERNATIONAL GAME	:	
TECHNOLOGY,	:	
	:	
Employer Below,	:	
Appellee.	:	

Submitted: June 10, 2011

Decided: June 30, 2011

ORDER

Upon Appellant's Motion for Attorney's Fees.

Denied.

Walt F. Schmittinger, Esquire of Schmittinger & Rodriguez, P.A., Dover, Delaware;
attorney for the Appellant.

John J. Ellis, Esquire of Heckler & Frabizzio, Wilmington, Delaware; attorney for the
Appellee.

WITHAM, R.J.

This is the Court's Order upon Appellant's motion for attorney's fees pursuant to 19 Del. C. 2350(f). For the reasons set forth in this Order, the motion should be denied.

FACTS

Mickey East ("Appellant") suffered unspecified injuries while employed by International Game Technology ("Appellee"). He received medical treatment, which cost a total of \$3,984. Unfortunately, the record does not specify which treatments were provided, nor does it contain the individual medical bills.¹ The parties do not dispute that Appellee is obligated to pay for the treatment under Delaware's worker's compensation statute. Appellee paid \$3,460.53 to cover the medical expenses.

The parties dispute whether Appellee issued an adequate payment under the worker's compensation fee schedule. Appellee contends that it has already exceeded its obligations under the fee schedule, which, in its view, required the payment of only \$2,240.90. Conversely, Appellant contends he is owed an additional \$462.95.

PROCEDURAL HISTORY

Claimant-Appellant filed a petition seeking \$462.95 in worker's compensation for an allegedly unpaid medical bill. Defendant-Appellee requested that the petition be dismissed because it had already paid the bill according to the fee schedule. The Board held a hearing on April 14, 2010. It found that the bill had been paid. The

¹ Appellee helpfully included a list of individual bills in its answering brief. However, the bills are not included in the record, and there is no indication that the Board reviewed them all before dismissing the case.

Board decided to dismiss the petition within one week unless Claimant-Appellant produced any other bills that might support the claim.² No further bills were produced, and the petition was dismissed. Claimant-Appellant appealed to Superior Court, contending: (1) that the Board's decision was not supported by substantial evidence, and (2) that the summary dismissal deprived him of due process under the law.

The Court found that it was impossible to properly review the Board's decision because the Board did not specifically explain why they found that the bill had been paid. Therefore, the Court remanded the case so that the Board could "show the math" behind its decision. The Court further held that the Board did not deny Appellant of due process under the law.

Standard of Review

The Superior Court may at its discretion allow a reasonable fee to claimant's attorney for services on an appeal from the Board to the Superior Court and from the Superior Court to the Supreme Court where the claimant's position in the hearing before the Board is affirmed on appeal.³

DISCUSSION

Appellant petition for attorney's fees must be denied because the Court did not affirm the position he took before the Board. Appellant's position before the Board

² *East v. International Game Technology*, I.A.B. Hearing No. 1246344 (April 14, 2010).

³ 19 Del. C. 2350(f).

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was that he has not been adequately compensated according to the worker's compensation fee schedule. He further argued that he was entitled to an additional hearing on the matter before the Board could dismiss the case. On appeal, this Court found that it was impossible to properly review the decision because the Board neglected to clearly set forth its reason for finding that the bill had been paid. Therefore, the case was remanded. The Court did not reach the issue of whether Appellant had been adequately compensated. Further, the Court rejected Appellant's Due Process claim (*i.e.* that he was entitled to an additional hearing). Thus, there is no basis for Appellant to contend that his position before the Board was affirmed upon appeal. Therefore, his motion for attorney's fees must be denied.

CONCLUSION

For the foregoing reasons, Appellant's motion for attorney's fees and costs is **DENIED**. IT IS SO ORDERED.

Hon. William L. Witham, Jr.
Resident Judge

WLW/dmh

oc: Prothonotary

xc: Walt F. Schmittinger, Esquire
John J. Ellis, Esquire